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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1943**

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# No. 998

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EDWARD PAGE GASTON,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA.

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.**

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# No. 998

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EDWARD PAGE GASTON,

*Petitioner,*

*vs.*

THE UNITED STATES OF AMERICA,

*Respondent.*

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.**

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*To the Honorable Justices of the Supreme Court of the United States:*

The petitioner, Edward Page Gaston, is seeking certiorari in this case in that the Court below either overlooked or failed to consider certain points constituting the basis of petitioner's appeal, and in petitioner's opinion error has been committed.

The petitioner is a resident of the District of Columbia.

The respondent is the United States of America.

Petitioner was convicted in the Municipal Court for the District of Columbia, Criminal Division, of the charge of

wearing without right the duly prescribed uniform of a Captain in the United States Army. The judgment was affirmed by the Municipal Court of Appeals for the District of Columbia, *Gaston* v. *United States* (R. 17), 34 A. (2nd) 353; that a petition for allowance of appeal to the United States Court of Appeals for the District of Columbia was allowed (R. 28), and on April 10, 1944, the United States Court of Appeals affirmed the judgment below (R. 32).

**Statement.**

Edward Page Gaston was arrested January 13, 1943, by agents of the Federal Bureau of Investigation, appeared before the United States Commissioner, bond was set and he was held for action by the Grand Jury, however, on April 14, 1943, an Information was issued by the Office of the United States Attorney (R. 1) and which in part read as follows:

> * * * one Edward Page Gaston late of the District aforesaid, on or about, to wit: 14th day of November in the year of our Lord, one thousand nine hundred and forty-two with force and arms, at the District aforesaid, and within the jurisdiction of this Court, not being an officer or enlisted man of the United States Army, did wear the duly prescribed uniform of a Captain in the United States Army; and two "U. S." insignias on coat lapels, Captain's bars on shoulders against the form of the statute in such case made and provided, and against the peace and Government of the United States of America * * *

The petitioner admittted wearing a uniform on the date alleged, but has contended at all times that it was not the uniform as charged in the Information, but was in fact the uniform of a Captain in the New York National Guard, and which uniform petitioner firmly believed he had the right to wear on certain occasions that came within the exceptions of

Section 1393, Title 10, U. S. C. A. The question as to whether or not the occasion came within the exceptions was not in issue. Edward Page Gaston never claimed to hold a commission in the United States Army (R. 13) and it appears to be a conceded fact that the uniform was not worn with the thought of misrepresentation or for any personal gain or benefit (R. 26).

Petitioner at all times maintained he was within his right in wearing the uniform of Captain in the New York National Guard on occasions of military ceremony, social functions and informal gatherings of a military nature. On May 16, 1918, he enlisted in the New York State Guard as a private in Company E; that on July 30, 1918, was commissioned a 2nd Lieut. 1st Brigade (Aide) and on November 25, 1918 was made a Captain. On December 30, 1918, he was placed on the State reserve list and honorably discharged therefrom October 11, 1926.

On June 27, 1922, the New York State Guard became federally recognized and was thereafter known as the New York National Guard. At the time however, petitioner, was outside of the United States and upon his return to the country some years later was notified and received his honorable discharge bearing date of October 11, 1926, signed by C. P. Lenart, Lt. Colonel A. G. D. N. Y. N. G. Personnel Bureau, and which certificate was offered in evidence (Exhibit 3). During the following years petitioner joined the Reserve Officers Association of the United States and was for a period of approximately three years actively engaged in the affairs of that organization. Later he joined the United States Infantry Association, which is a military service unit recognized by the War Department, and was at the time of trial and still is a member of that organization in good standing.

## Jurisdiction.

Jurisdiction is invoked under Section 240 of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938, 28 U. S. C. A. Sec. 347.

## Questions Presented.

1. Was there a variance between the allegations contained in the Information and the proof offered in support thereof that affected the substantive rights of the petitioner?

2. Did the Information clearly and concisely inform the petitioner of the exact nature and cause of the accusation against him in such clear and unmistakable language as to properly enable him to prepare his defense?

3. Is specific intent a requirement for violation of Section 1393, Title 10 U. S. C. A. and is scienter a necessary element of the crime covered by that statute?

4. Did the Information charge more than one offense?

## Reasons for Granting the Writ.

There are several reasons for granting this Writ:

1. The Municipal Court of Appeals for the District of Columbia inferentially held there was no variance between the Information and the proof, and the United States Court of Appeals in adopting the opinion as its own conclusions (R. 31) accordingly so held. We feel there was a definite variance that affected the substantive rights of the petitioner.

2. The Courts below in their opinions failed to consider whether or not the Information properly informed the petitioner of the exact charge against him, and in such clear and

unmistakable language so as to enable him to properly prepare his defense.

3. The Court below (R. 30-31) held that the statute, Section 1393, Title 10 U. S. C. A. does not require an intent to violate the law and that scienter is not a necessary element of the crime. Petitioner contends that said statute is capable of the construction requiring intent and that scienter is a necessary element and that the Court below erred in not so holding.

4. The Courts below erred in the assumption that the Information charged more than one offense against petitioner.

**Prayer for Writ.**

Wherefore, petitioner prays for a writ of certiorari to be issued under the seal of this Court directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and send to this Court all proceedings in the instant case, so that the cause may be reviewed and determined by this Court, and so that the judgment of the United States Court of Appeals may be reversed and the petitioner be granted such other and further relief as may seem proper.

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